



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency:
Department of Retirement Systems

☒ **Permanent Rule**
☐ **Emergency Rule**

Effective date of rule:
Permanent Rules
☒ 31 days after filing.
☐ Other (specify) _____
(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:
Emergency Rules
☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain: _____

Purpose: To incorporate the provisions of chapter 451, laws of 2005 (the allowance under this section is no longer subject to actuarial reduction for early retirement), and to clarify eligibility requirements.

Citation of existing rules affected by this order:

Repealed:
Amended: WAC 415-104-480
Suspended:

Statutory authority for adoption: RCW 41.50.050(5)

Other authority : RCW 41.26.470(6) and (7)

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 06-15-012 on July 6, 2006.

Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: _____

Date adopted: August 23, 2006

NAME (TYPE OR PRINT)
Sandra J. Matheson

SIGNATURE

Sandra J. Matheson

TITLE
Director

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

AUG 24 2006

TIME 10:30
WSR 06-18-007

AM
PM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>1</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

AMENDATORY SECTION (Amending WSR 04-22-074, filed 11/1/04, effective 12/2/04)

WAC 415-104-480 LEOFF Plan 2 duty disability benefits.
~~((Members of the law enforcement officers' and fire fighters' retirement system (LEOFF) Plan 2))~~ This section applies to you if you are a LEOFF Plan 2 member who incurs a disability in the line of duty ~~((are entitled to duty disability benefits subject to the requirements in))~~ per RCW 41.26.470 (6) and (7) and this section.

(1) **Who is entitled to duty disability benefits?** Any member of LEOFF Plan 2 who ~~((is deemed by the department to have))~~ the department determines has:

(a) Incurred a physical or mental disability in the line of duty;

(b) ~~((Been))~~ Become totally incapacitated for continued employment in a LEOFF eligible position; and

(c) Separated from a LEOFF eligible position due to the disability ~~((, and who:~~

~~((i) Has a retirement date on or after January 1, 2001; or
((ii) Is eligible under this section to have a retirement date on or after January 1, 2001.~~

~~The disability may be physical or mental, and may be caused by injury or occupational disease)).~~

(2) **How is "line of duty" defined?** Line of duty means any action or activity ~~((done))~~ occurring in conjunction with your employment or your status as a law enforcement officer or fire fighter ~~((that is))~~ and required ~~((, obligated,))~~ or authorized by law, rule, regulations, or condition of employment or service.

(3) **When are the duty disability provisions effective?** The ~~((effective date of the))~~ duty disability provisions under RCW 41.26.470 (6) and (7) ~~((is))~~ are effective June 10, 2004 ~~((, and applies retroactively to January 1, 2001. In order to qualify for the provisions, you must have separated from your LEOFF-eligible position due to a duty disability with a retirement date on or after January 1, 2001)).~~

(4) **How do I apply for duty disability benefits?** ~~((You must submit))~~ The department must receive:

(a) A completed three-part disability retirement application on the form provided by the department.

(i) Part 1: Disability retirement application. You must complete and sign the application. If you are married, your spouse must sign ~~((consent of))~~ consenting to the retirement

payment option you choose. ~~((You must have))~~ Your signature(s) must be notarized.

(ii) Part 2: Employer's statement and report. Your employer must complete, sign and return it directly to the department.

(iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, ~~((naturopathy))~~ clinical psychology, podiatry, dentistry, or optometry~~((-))~~;

~~(b) ((Proof of applying to the Washington state department of labor and industries (L&I) or a self insurer for workers' compensation benefits under Title 51 RCW and, if L&I or the self insurer determined eligibility, a copy of the determination;~~

~~(e))~~ Additional information ~~((that may be))~~ requested by the department; and

~~((d))~~ (c) Any other material you want the department to consider.

(5) What ~~((types of))~~ evidence will the department use to determine whether I am entitled to benefits under this section? The department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(a) Information and determinations ~~((obtained from))~~ by the department of labor and industries (L&I) or a self-insurer;

(b) ~~((The documentation you submit;~~

~~(c) Facts surrounding your injury or occupational disease))~~ Medical, vocational, and other information about your disability;

~~((d))~~ (c) Your job description;

~~((e))~~ (d) Your membership records, maintained by the department;

~~((f) Materials obtained or provided by your employer;))~~
and

~~((g))~~ (e) Any other relevant evidence.

(6) What would disqualify me for duty disability benefits? You are not eligible for duty disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;

(b) Your application ~~((is incomplete or lacks sufficient documentation to prove))~~ does not provide adequate proof that your disability was incurred in the line of duty;

(c) ~~((Your claim for workers' compensation benefits under Title 51 RCW was denied either because your disability was not incurred in the course of employment or because your condition~~

~~was not recognized as a disability;~~

~~(d)) The disability occurred as a result of intentional misconduct((~~

~~(e)) including but not limited to:~~

~~(i) An action ((was taken by)) you took intentionally to bring about your own disability;~~

~~((f) Your mental or physical faculties were impaired due to voluntary intoxication as defined in subsection (17) of this section; or~~

~~(g) You were performing your duties in a grossly negligent manner at the time the disability occurred)) (ii) Gross negligence on your part; or~~

~~(iii) Your voluntary intoxication. As used in this section, "intoxication" means a disturbance of mental or physical faculties resulting from the introduction of:~~

~~(A) Alcohol into the body as evidenced by:~~

~~(I) A blood alcohol level of .20 per centum or greater; or~~

~~(II) A blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the officer or fire fighter was not acting in an intoxicated manner immediately prior to the injury; or~~

~~(B) Drugs or other substances in the body.~~

(7) Who decides if I meet the requirements for benefits under this section? The LEOFF plan administrator.

(8) May I petition a decision made by the LEOFF plan administrator? Yes. If the LEOFF plan administrator denies your request for a disability benefit ~~((or determines your disability was not incurred in the line of duty))~~ under this section, you may petition for review under chapter 415-04 WAC.

(9) What are the duty disability retirement benefits? As a duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent; or

(b) A monthly ~~((benefit))~~ allowance equal to ~~((b)(i) or (ii) of this subsection, whichever provides the greater benefit))~~:

(i) ~~((A minimum monthly benefit equal to))~~ Ten percent of your final average salary (FAS), which is nontaxable; ~~((or))~~ and

(ii) ~~((A monthly benefit of))~~ Two percent of your FAS for each year of service~~((, adjusted for early retirement if you are under age fifty-three and any survivor option chosen. A portion of your benefit, equal to ten percent of your FAS, is nontaxable))~~ beyond five years.

Your monthly allowance will not be adjusted for early retirement. However, if you choose a benefit option with a survivor feature as described in WAC 415-104-215, your monthly

allowance will be actuarially reduced to offset the cost. The factors used to determine the amount of the reduction are in WAC 415-02-380.

Example: Tom incurs a duty disability at age 42 after twenty years of service. His final average salary is \$5000 per month. Tom's wife is also age 42(~~(, and)~~). He chooses ~~((survivor))~~ Benefit Option Two ~~((per))~~ so that, after his death, his wife will receive a monthly allowance equal to the gross monthly allowance he was receiving. See WAC 415-104-215 (2)(b).

Tom's minimum duty disability ~~((benefit))~~ allowance, calculated at 10 percent of his final average salary (FAS)~~((, would be))~~ is:

Allowance	$\$5000 \times 10\% =$	\$500
((Benefit with survivor Option Two)) <u>Allowance after the actuarial reduction for Option Two (survivor feature)</u>	$\$500 \times 0.87 =$	\$435 (nontaxable)

~~((Tom's duty disability benefit, using standard computation would be))~~ In addition, Tom will receive:

Allowance	((2% X AFS (\$5000) X 20 years)) <u>15 years X 2% X FAS (\$5000) =</u>	\$(2000)) <u>1500</u>
((Benefit after reduction for early retirement	$\$2000 \times 0.39$ (early retirement factor) =	\$(780))
((Benefit with survivor Option Two)) <u>Allowance after the actuarial reduction for Option Two (survivor feature)</u>	$\$((780)) \text{ } 1500 \times 0.87 =$	\$(678.60 (\$435 of this amount is nontaxable))) <u>1305</u>

Tom will receive ~~((a monthly benefit of \$678.60 because that is the greater benefit))~~ \$435 (nontaxable) plus \$1305 (taxable), for a total monthly allowance of \$1740.

(10) **Are my duty disability benefits taxable?** The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, part of your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

~~((It is important that you realize that))~~ The department does not:

(a) Guarantee that payments ~~((should or should not be designated as))~~ are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its ~~((nontaxable))~~ determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

~~((11)) ((If I retired on or after January 1, 2001, may I apply for duty disability benefits? If you separated employment due to disability and retired with a service or nonduty disability retirement date on or after January 1, 2001, you may apply to the department for duty disability benefits according to the provisions of subsection (4) of this section.~~

~~((12)) If I separated from employment)) If I previously withdrew my contributions, may I apply for duty disability benefits? If you separated from employment due to a disability and ~~((qualify for a retirement date on or after January 1, 2001))~~ withdrew your contributions, you may apply for duty disability benefits according to the provisions of subsection (4) of this section. ~~((If the LEOFF administrator determines you are entitled to duty disability benefits, you will receive a monthly benefit calculated as provided in subsection (9)(b) of this section. However, if you withdrew your contributions, you must repay the entire amount you withdrew. You may repay the withdrawn amount:~~~~

~~((a) By returning the entire amount you withdrew to the department; or~~

~~((b) By an actuarial reduction in your monthly benefit.))~~

~~((12)) If I previously withdrew my contributions and am approved for duty disability benefits, what will I receive as a benefit? If the LEOFF plan administrator determines you are entitled to duty disability benefits, the department will amend Internal Revenue Service reporting to designate your previous withdrawal as nontaxable. In addition, you may choose either of the following:~~

~~((a) If you previously withdrew 100% of your contributions, you may choose to receive an additional lump sum payment equal to 50% of the contributions you withdrew. The payment will be nontaxable; or~~

~~((b) If you previously withdrew 100% or 150% of your contributions, you may choose to receive a monthly allowance according to subsection (9) of this section. You must repay the amount you withdrew, either in a lump sum payment or by having your monthly allowance permanently actuarially reduced to offset~~

the amount of your previous withdrawal.

Example: John was injured on the job and separated from his LEOFF position in March 2002. At the time he separated, he was 43 years old, had 10 years of service, and his final average salary was \$5,000.00 per month. At that time, John chose to withdraw \$75,000, which equaled 150 percent of his retirement contributions. John subsequently applied under the provisions of RCW 41.26.470 (6) and (7) and was deemed eligible for duty disability benefits. The department calculated John's benefit according to the methods in subsection (9) of this section ~~((and determined it was to John's))~~. John determined it was to his advantage to take ~~((the minimum monthly benefit))~~ a monthly allowance.

If John ~~((chooses to))~~ **repays the entire amount he withdrew in a lump sum**, his monthly ~~((duty disability benefit))~~ allowance will be calculated according to the formula in subsection (9)(b) of this section:

Minimum monthly ((benefit)) allowance	10% X ((AFS)) FAS (\$5000) =	\$500 ((nontaxable))
	Plus:	
Monthly allowance	5 years X 2% X FAS (\$5000) =	\$500
John's total monthly allowance will be \$1,000 ¹ .		

If John ~~((chooses to))~~ **repays the withdrawn amount** ~~((by having his monthly benefit actuarially reduced, his benefit will be))~~ **through a permanent actuarial reduction**, his monthly allowance will be reduced as follows:

((Minimum monthly benefit)) Monthly allowance (calculated above)	((10% X AFS (\$5000))) =	\$(500)) 1000
Reduction to repay the withdrawn amount (\$75,000)	\$75,000 X .0049904 (annuity factor, which is based on the retiree's age) =	-\$374.28
Monthly ((benefit)) allowance		\$(125.72)) 625.72 ²

¹ Annuity factors are provided in WAC 415-02-340.

² If John chooses a benefit option with a survivor feature, as described in WAC 415-104-215, his monthly allowance will be actuarially reduced to offset the cost. Survivor option factors are provided in WAC 415-02-380.

(13) **When does a duty disability retirement benefit end?**
The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2). Your duty disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position; or
(b) Medical examination reveals that you ~~((have recovered from the incapacitating disability))~~ are no longer totally incapacitated for employment in a LEOFF eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

(14) **If I retire for a duty disability and die, will my survivor beneficiary receive a monthly ((benefit)) allowance?**
If you ~~((elect a survivor option))~~ choose a benefit option with a survivor feature under WAC 415-104-215(2) at the time of retirement, your survivor beneficiary will receive a monthly ((benefit)) allowance after your death.

(15) **What happens if I return to a LEOFF-eligible position?**
If you ~~((recover from your disability and))~~ return to a LEOFF-eligible position, your monthly ((retirement benefit)) allowance will stop.

(16) **If I return to a LEOFF-eligible position, how will my future retirement benefit be affected?** When you reretire, your monthly ((benefit)) allowance will be calculated pursuant to RCW 41.26.500 ~~((using any additional service credit and your highest sixty consecutive months of salary, but will be reduced if:~~

~~(a) You were receiving a monthly benefit equal to ten percent of your FAS; or~~

~~(b) You were receiving a monthly benefit calculated under the normal two percent rule but had an early retirement factor applied; or~~

~~(c) You received the one-time lump sum payment equal to one hundred fifty percent of your contributions, unless you repay the amount you received.~~

~~(17) As used in this section, intoxication means a disturbance of mental or physical faculties resulting from the introduction of alcohol into the body as evidenced by:~~

~~(a) A blood alcohol level of .20 per centum or greater;~~

~~(b) A blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his/her injury; or~~

~~Resulting from drugs or other substances in the body)) and~~
WAC 415-104-111.